



Privacy and Security Sub Work Group Agenda

Meeting Date:	Tuesday Feb 23, 2010	Facilitator:	Kelly Coyle
Place:	Web-ex	Web-ex Information:	https://premconf.webex.com/premconf/j.php?ED=102879222&UID=0 password: mihin-ps5
Time:	9:00 – 11:00 AM	Teleconference #:	1-888-3948197 passcode 869479

Topic 1:	<p>Housekeeping and Logistics</p> <p>Roll Call of Voting Members <i>For both voting and public work group members- when you sign in on the web ex, please use your first and last name so we know who is participating</i></p> <p>Approval of meeting minutes State HIE Announcement Review of Meeting Schedule- timeline Google Groups Update Questions</p>
Topic 2:	<p>Finish Up Consent/VOTE</p> <p>Presentation Discussion VOTE on Individual Consent Option Policy Requirements Opt Out Form:Review</p>
Topic 3:	<p>Next Meeting Reminder</p> <p style="text-align: center;">Tuesday, March 9, 9-11 am</p>



Privacy and Security Work Group Meeting Minutes

Meeting Date:	Tuesday Feb 9 2010	Facilitator:	Kelly Coyle
Place:	Web-ex	Web-ex Information:	https://premconf.webex.com/premconf/j.php?ED=102879182&UID=73752177 password: mihin-ps4
Time:	9:00 – 11:00 AM	Teleconference #:	1-888-3948197 passcode 869479

Topic 1:	Housekeeping and Logistics Roll Call of Voting Members <i>For both voting and public work group members- when you sign in on the web ex, please use your first and last name so we know who is participating</i> Approval of meeting minutes Review of Meeting Schedule- timeline Questions
Topic 2:	Consent- Review Framework Document
Topic 2:	Strategic Plan Discussion Continue Discussion and Review Vote to Approve Strategic Plan Draft

DISCUSSION	Topic 1: Housekeeping and Logistics	
Roll Call of Voting Members: All voting members are present except for George Goble who is on vacation.		
Approval of meeting minutes: MOTION: Approve meeting minutes MOTION SECONDED VOTE: Approved (all present Voting Members)		
ACTION ITEMS	PERSON RESPONSIBLE	DEADLINE
None.		
DISCUSSION	Topic 2: Consent- Review Framework Document	
Kelly Explained that at this point, we are really looking at Opt Out or Opt Out with Exceptions. She provided some background on the national vision – reiterated the goal which is to improve the quality of healthcare and reduce costs.		
Kelly explains that even though there are big questions being asked, the workgroup needs to remember that we have a limited scope and a limited amount of time. The scope is clinical data only and no insurance companies or payers will be involved. Also, the data being discussed is for the initial use cases: MCIR and lab results. Third, also limited amount of health exchanges happening in the state. We are talking in terms of the data flowing in and out of the technical architectures and then there is sensitive data with additional legal requirements. In future we will spend some time identifying those.		

MCIR is already Opt Out and the WG has eliminated Opt In at last meeting.

Kelly asks the workgroup to look at the summary document for informed Opt Out that was sent out and what the workgroup has already decided...

Someone asks if this is data going into the HIE or the backbone. Kelly answers that it is from provider's EMR (if they have one) into the HIE and then to the backbone to another HIE if necessary. Specially protected data needs additional consent. All legally permissible data flows in. If an individual opts out, they opt out of data being able to be accessed and the data then stays in the HIE unless there is a break the glass situation.

Regardless how much we try to prevent it, there could be a breach. So due to trust issues, we might have to have specially protected information excluded. Are we going to divide up information? For example, all pharmacy is included and has no special protection?

Someone asks if we could have some sort of emergency release for specially protected information. But if the information does not flow into the HIE in the first place, this causes a problem because then it cannot be available for break the glass.

Someone asks if this information flowing in and out of the HIE is part of business operations or a disclosure? Since an HIE is a business associate of the provider, information exchange is a part of business operations and should not be considered a 'disclosure'. This may be different with the federal drug and alcohol abuse regulations which are strict when it comes to information disclosure.

David Allen explains that the purpose of backbone is for data to flow from HIE to HIE. There will not be EHR to EHR exchanges. An HIE captures data for a patient wherever they are being treated and a provider has a relationship with a patient. The HIE routes that data. Any 'result' will pass through the HIE where it is stored in a federated concept. He asks the workgroup to think of this in the big picture and for the long term where all paper records will eventually go away and all patient information will be electronic.

Everyone agrees that in the future all information shared between treating physicians will be shared electronically.

Kelly directs the workgroup's attention to the second bullet point on the Summary document for Informed Opt Out: It states that all data flows out to all providers who are involved in treatment of individual and asks if consent is obtained provider by provider or if it is assumed for all treating providers.

She asks the workgroup if we are going to ask an individual to sign a form for each and every time or is it for assumed consent for any authorized person involved in their treatment. Melissa indicated she is against provider by provider consent.

David Allen comments that 'opt out' can get very granular. He adds that the HIPPA NPP form is once a year, now that form will be modified and wording must be consistent across MiHIN. The HIPPA form does a few things: 1.) it gives consent to physicians; 2.) it states that the information is going to HIE, (not the physician that lives next door); The other thing to look at is for each individual to have a flag that says this piece of information can only be seen by so-and-so.

Second bullet on the Summary document on Informed Opt Out discusses whether the individual provides consent to a specific provider or to all providers that could be involved in treatment.

Margaret & Melissa asked should time limited consent be there – it's contrary to safety and efficiency. Once a patient has decided not to opt out, they should be OK with no time limit. On a technology level, there will be a pop-up, asking a physician to confirm that he/she has a treatment relationship with this patient.

Linda asks the workgroup to consider what is happening in today's world. When you sign today-s HIPPA form are you giving individual consent, or is it presumed to be for all treatment providers? Nancy answers that it is your consent to give information to *that* provider only. It does not mean that anyone can get it but it does apply to insurance or any specialists called in. Linda asks, "Why would it be different if it were electronic?"

Point made that public acceptance will depend on the amount and quality of consumer education. Kelly adds that MPHI has a physician-champion and prior HISPC Education work that will help to carry that message.

Back to the second bullet on the Summary document for Informed Opt Out and the topic of legally allowable data following out – this is how it currently happens. The other choice is that one paper gets signed and it gives all providers in the HIE



access to the patient's information. She asks if that is the direction the workgroup is heading?

Chuck indicates group is leaning toward provider by provider consent to access info in the HIE. Margaret, Nancy & Melissa feel this is very administratively burdensome. Margaret reiterated that no consent is necessary now for treatment – if requiring authorization for every provider it becomes an opt-in system. Any person accessing information who is not authorized, i.e., not treating the patient, then that's a HIPAA violation which will be handled with audit and sanctions. Patients have a right to an accounting of disclosure.

Someone mentions that the workgroup should try to give individuals as much control as possible over their information but the group agrees that what they are talking about is covered by HIPPA and they cannot go in a different direction from HIPPA.

Linda reminds the group that there could be a website built where individuals can look up who accessed their information and having that available can minimized unauthorized access. Noted that this also may have some untoward legal ramifications however, still true that patient is entitled to an accounting of all disclosures.

Kelly agrees that some people might get nervous; there is fear and the possibility of breaches so we have to educate. Also consumers must have some sort of decision point, (i.e., some level of granularity for an individual to exercise some level of control). But that must be balanced with the goals and objectives of the MiHIN and the fact that all patient information will be electronic at some time in the future.

Mike explained the technical aspects of how system will approach allowing providers to query the system. Can have a window pop up that asks if provider is authorized to access the record and provider has to confirm – a "Y" will be placed in system for future use. Could have a date and allow for say 2 years. Means provider has to affirm that they have a treatment relationship with the patient they are seeking information on. They could lie and that's another issue that would have to be addressed by audit.

Motion: Providers will be able to access legally permissible PHI without specific written consent when they are in a treatment relationship under applicable law. The motion receives 7 no votes, 2 yes votes, and there are 3 voting members not available to vote. Motion fails. Comment made that this motion now overrides opt out.

Mike noted that in VT consent is obtained from the first provider that gets it enters into system and it stays there for 2 years.

Another motion: Providers must obtain one-time written consent to retrieve legally permissible PHI. This motion receives 2 no votes and seven yes votes. Motion passes. It is noted that this motion has to be revised to deal with nuances such as break the glass before it can be final. Comments made that this definitely creates an opt-in system.

Mike Gagnon comments that this is a fairly common and fairly straightforward approach. It means we have to ask every HIE to do this and they will have to have ability to implement it. At the backbone level, we have to be able to trust it but in the current design we are trusting authentications so that should be ok. Provider can see that records exist on the system but unless they break the glass, they will see no detail information.

Denise & John indicated that this is opt in and that it would be easier to track 3% that opt out rather than the 97% that opt in. One to one transfers need to be excluded but that isn't what motion says.

Chuck – made motion broad – would make sense to craft a more specific motion. May want to change to an opt out motion.

The next step will be for the group to continue this discussion using Google Groups or a Wiki. We will try to get that set up and notify everyone within the next couple of days.

ACTION ITEMS	PERSON RESPONSIBLE	DEADLINE
None.		
DISCUSSION	Topic 3: Strategic Plan Discussion	



Deferred until next meeting on February 23, 2010.

ACTION ITEMS	PERSON RESPONSIBLE	DEADLINE
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Attendees:

- David Allen MiHIN PCO – Consulting Team
- Jeff Bontsas Voting Member
- Donald Carne Member
- Denise Chrylser Voting Member
- Kathleen Cornish MPHI
- Moira Davenport-Ash Voting Member
- Darrell Dontje Voting Member
- Chuck Dougherty Voting Member
- Mike Gagnon MiHIN PCO – Consulting Team
- Tosca Habel Member
- John Hazewinkel Voting Member
- Guy Hembroff Member
- Huzaifa Jamali MiHIN PCO – Consulting Team
- Michael Khoury Member
- Pat Klima Member
- Glen Lutz Voting Member
- Linda McCardel MPHI
- Mark LaCross Member
- Troy Lane Member
- Harry Levins MPHI
- Pat Maltby MiHIN PCO
- Margaret Marchak Chairperson
- Melissa Markey Voting Member
- Teresa Mulford Member
- Paul Muneio Member
- Amber Murphy MiHIN PCO – Consulting Team
- Beth Nagel MiHIN PCO
- Samer Naser MiHIN PCO – Consulting Team
- Laura Rappleye MiHIN PCO
- Kurt Riegel Member
- Joesph Saul Member
- Michael Stines Member
- Mike Tarn Voting Member
- Nancy Walker Voting Member
- Shelli Weisberg Voting Member

Privacy and Security Work Group Meeting

News Release

FOR IMMEDIATE RELEASE
Friday, February 12, 2010

Contact: HHS Press Office
(202) 690-6343

Sebelius, Solis Announce Nearly \$1 Billion Recovery Act Investment in Advancing Use of Health IT, Training Workers for Health Jobs of the Future

Grant Awards to Help Make Health IT Available to Over 100,000 Health Providers by 2014, Support Tens of Thousands of Jobs Nationwide

- 40 States were awarded a State HIE Cooperative Agreement
- 32 Regional HIT Extension Centers were awarded
- In Michigan:
 - State HIE Cooperative Agreement: \$14,993,085
 - Regional Health IT Extension Center: \$19,619,990

Top 11 State HIE Awards

Awards were given based on a formula that includes a base allocation for every applicant (\$4 million) and then an equity adjustment was added to account for: number of primary care physicians, number of acute care hospitals, number of medically underserved and rural providers.

1	California Health and Human Services Agency	\$38,752,536
2	New York eHealth Collaborative Inc.	\$22,364,782
3	Illinois Department of Health care and Family Services	\$18,837,639
4	Commonwealth of Pennsylvania	\$17,140,446
5	Michigan Department of Health	\$14,993,085
6	Ohio Health Information Partnership LLC	\$14,872,199
7	Missouri Dept of Social Services	\$13,765,040
8	Georgia Department of Community Health	\$13,003,003
9	North Carolina Department of State Treasurer	\$12,950,860
10	State of Tennessee	\$11,664,580
11	Virginia Department of Health	\$11,613,537

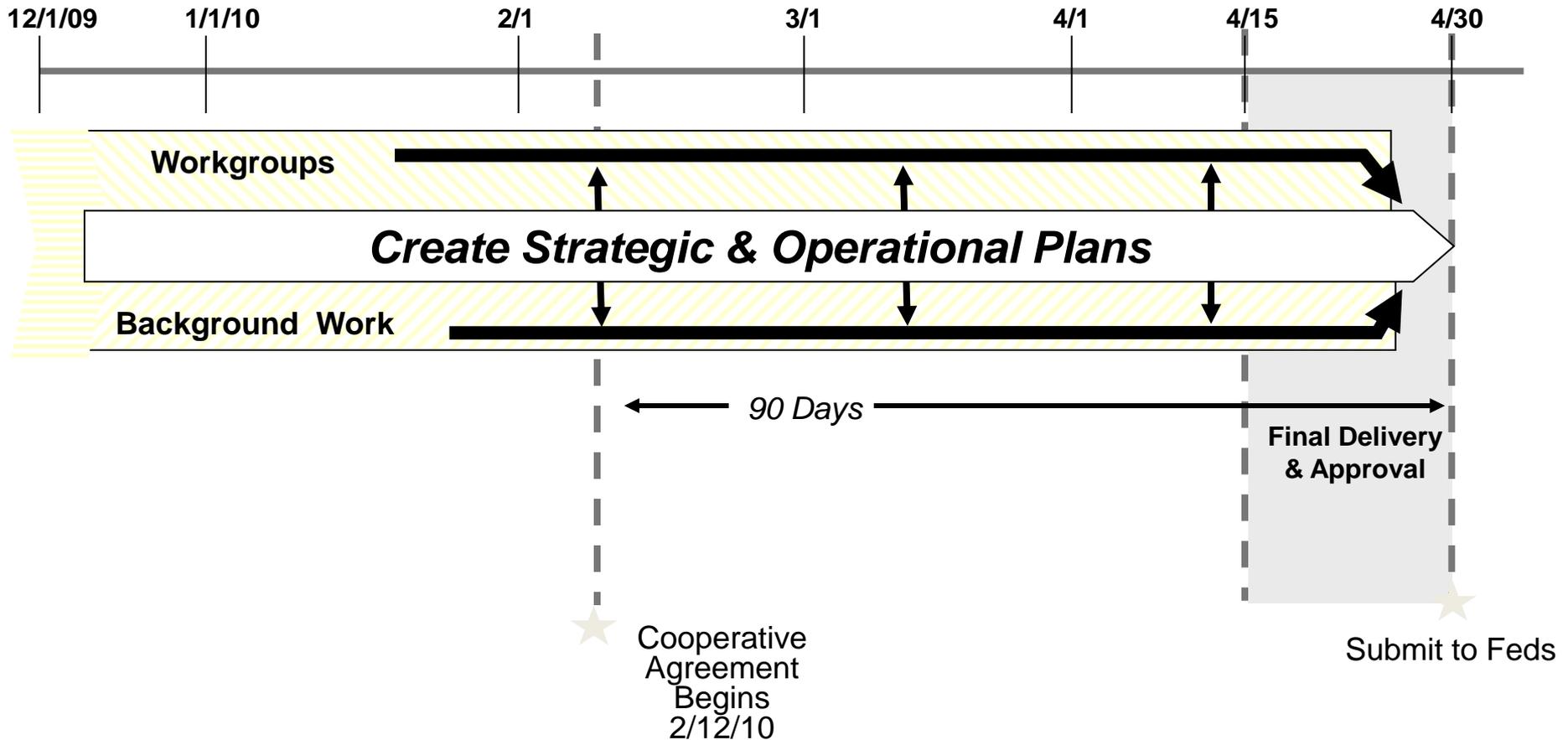
State HIE Cooperative Agreement

- \$14,993,085
- \$1,690,912 required in matching funds
- 4 year cooperative agreement
- Cap of \$1,000,000 for planning
- Remainder of agreement must go toward statewide HIE and nationwide HIE



MiHIN Timeline

Goal: Submit Strategic & Operational Plans by April 30, 2010



MiHIN Opt Out Summary

Privacy & Security Sub Work Group

5th Meeting

February 23, 2010

“Facts”

- HIPAA authorizes the use and disclosure of protected health information (PHI), without authorization or consent, for treatment, payment and health care operations activities.
- A patient’s consent to have their data exchanged is viewed as implicit in their consent to receive care
- Currently, treating providers share PHI without patient consent
- State and Federal laws apply special consent requirements to selected PHI referred to as “specially protected PHI”

“Facts”

- Two types of data:
 - General Health Information subject to to HIPAA
 - Specially Protected Health Information – sensitive health data subject to more stringent state or federal laws
- Providers are required to obtain proper consent for sharing of specially protected PHI and this will not change
- Goal of health information exchange is to improve quality & effectiveness of healthcare and reduce costs
- Must balance making PHI available for treatment at the point of care and providing patients choice & control

Keep in Mind

- Purpose of MiHIN
 - Clinical data exchange
 - Increase quality of care
 - Increase patient safety
 - Reduce cost of care
 - Ensure providers have right data at right time
 - Vehicle for integrated delivery networks
 - Assist providers in achieving ‘meaningful use’ of electronic health records

Keep in Mind

- Ensuring reasonable patient privacy & consumer choice can be accomplished
- Do not want to create barriers to care or sharing of health information that are not there now
- Need to encourage electronic health information exchange consistent with State and Federal vision
- Want robust amount of patient data early on in life of MiHIN, to increase value to participating providers, while still affording consumers ability to exercise their right of exclusion from the exchange

Background

- HISPC Legal workgroup convened in 2007 to address statewide consent policy
- 12-13-2007 Michigan HIT Commission approved Legal Workgroup recommendation to “establish informed opt-out as the method of consumer control of how their protected health information becomes part of the HIE”
- The MCIR currently uses an opt out policy as do other health information exchanges across the country
- Whether there is an opt in or opt out policy only 3 to 5 % of participants elect not to have PHI in the HIE

Background

- Under the state HIE Cooperative Agreement the state must “create a common set of rules to enable inter-organizational and eventually interstate health information exchange while protecting consumer interests”
- The P & S WG will develop minimum statewide policies and procedures, one of which is a state wide approach for individual consent, for participation in Cross Community HIEs

Background

- Initially, two use cases will be implemented at the backbone level
 - Laboratory results
 - MCIR data – essentially immunizations
- MCIR has Opt Out policy working well
- Lab Results – JVHL – all hospitals send labs to organization for normalization and sharing
- Nothing beyond the NPP (Notice of Privacy Practices) is required for sharing this data

MiHIN Privacy & Security Work Group

- Where have we been?
 - 1-28-10 mtg: “No consent” approach and Opt out (without informed) were eliminated
 - 2-2-10 mtg: Option 1 & 2 (Opt in and Opt in with Exceptions) were eliminated
 - 2-9-10 mtg: At start of meeting two options left to discuss were Informed Opt Out and Informed Opt Out with Exceptions
 - End of meeting – motions passed to require Opt In.
 - 2-23-10 mtg: Need to get back on track!

Decision Points

Prior to looking at what Opt Out means, WG has to make a decision on whether data would be purged or retained if the patient does not want it to be shared with others

Data Retained or Purged

- WG Decision: If patient doesn't want any or some data shared
 - Retain and restrict data
 - Purge data
- Retain and restrict data
 - Allows Break the glass in emergencies
 - Provides a minimum policy that does not hamper Community HIE's ability to decide differently
 - Provides the most data for provider at point of care
 - Consistent with prior State consent work
 - Data is available if patient changes mind on opt out

Data Retained or Purged

- Purging data
 - Technically less complicated
 - Precludes break the glass in emergencies
 - Contrary to prior State consent work
 - Prevents Community HIE flexibility to retain all data
 - Data not available if patient changes mind on opt out
- Recommendation – retain and restrict all data
 - Provides most flexibility to Community HIEs
 - Allows break the glass
 - Consistent with State vision and prior work

Work Group Decision

If patient doesn't want any or some data shared should the data be

- retained and restricted?

- purged?

Informed Opt Out Discussion

- Assuming that all data be retained and restricted as a minimum policy – what opt out options will the patient have?
- Patient could have two or three options once informed:
 - Patient does nothing (default - understands data will be shared – no opt out)
 - Patient Opts Out (no data will be shared except in emergency situations)
 - Patient Opts out with Exceptions (general health information will be shared, sensitive health data subject to more stringent state or federal laws will not be shared except in emergency situations)

Work Group Decision

Patient can do nothing or can opt out.

Will policy also allow the patient to opt out with exceptions?

- Allowing both opt out options provides the patient with the most flexibility and choice and does not limit the Community HIE

Access to Data

- Assume Opt Out includes Opt Out with Exceptions and all data is retained
- If patient has selected Opt Out – provider will not have access to any data except in an emergency
- If patient has selected Opt Out with Exceptions – provider will have access only to general health information, not specially protected health information except in an emergency
- Patient decides to share all data – default position
 - Providers follow same practice as currently – obtain NPP
 - Providers legally required to obtain specified consent to access specially protected health information – no different than current practice

Access to Data

- Note that at inception, as only MCIR data & lab results will be exchanged via MiHIN, specially protected health information should not be a concern
- Providers accessing data subject to same consent requirements as currently
- If data has additional legal requirements for disclosure, providers will still have to comply with those requirements

Access to Data

- Only data allowed to be aggregated at the Community HIE level will be available to other HIEs
- When querying MiHIN, screen will require provider to affirm that they are a treating provider and proper consent has been obtained if needed
- Audit processes will be in place for look back
- If in future, additional clinical data is exchanged, this minimum consent policy framework could still apply
- Once Governance Entity is in place, policies can be revised as appropriate if necessary.

Assumptions

- Patient only has to Opt Out once
 - Remains in effect until patient changes mind
- Technical WG will determine how to track
- Patient will be able to rescind Opt Out decision
- Protection of PHI is paramount to public trust
- MiHIN will require security at all levels

Additional Work

- Consent policy framework does not operate alone
- Consent intertwined with
 - Audit
 - Authorization
 - Access
 - Authentication
- Minimum statewide policy & procedures for above will strengthen the consent policy
- Comprehensive Privacy & Security Framework will evolve over time – we are developing the “bones”

Additional Work

- Provider & Consumer education on HIE will be required – HISPC work to be leveraged
 - Written materials
 - www.MIHISPC.org
 - www.Secure4Health.org
- Details of education, workflow processes, etc. will be addressed after ONC approves State concept of HIE
- Goal is to have meaningful exchange of health information

NPP Language for MiHIN

This language was proposed by a previous MiHIN legal work group to be added to any standard NPP to inform the patient that their medical data would be included in the electronic health information exchange. Originally the group proposed to include more extensive language in the NPP, but after further discussion it became apparent that this might not have the desired effects because

- consumers rarely read NPPs and
- any material changes to NPP language might prompt legal review by participating providers and lead to inconsistent language adoption across the state.

Sample language:

This organization participates in the Michigan Health Information Network (MiHIN). For more information about MiHIN and your right to Opt Out of having providers access your protected health information via the MiHIN, please see www.mihin.org, call 1-800-XXX-XXXX, or write to MiHIN, P.O. Box XX, Lansing, MI 488XX."

By keeping the notice simple and creating separate consumer communications, MiHIN will have the flexibility to adapt messages as necessary.

**Request to Opt Out of Michigan Health Information Network (MiHIN)
or Request to Terminate Opt Out Form**

By completing and signing this form, I understand the following:

I understand if I Opt Out, there will be no access to my medical information through MiHIN except in an emergency.

I understand I have the option to change my mind and terminate the Opt Out provision.

If I signed as a legal representative I understand all references in this form to “me” or “my” refer to the patient.

I understand I have a right to a copy of this form.

Instructions: Check the appropriate box and complete all pertinent information. Sign and date the form.

Check only one

I don't want my Protected Health Information (PHI) accessed on the MIHIN system .

OR

I don't want my Specially Protected Health Information accessed on the MIHIN system.

OR

Request to Terminate my choice to Opt-Out.

I want to reverse my choice to not share my PHI electronically through the MiHIN. By completing and signing this form, I understand all of my PHI may be accessible to my health care providers, health plans and insurers unless restricted by applicable state or federal laws.

Patient Name _____
Last First Middle

Date of Birth _____ Home Address: _____
(MM/DD/YYYY)

Legal Representative
(if applicable) _____

Relationship to Patient _____

Entity Obtaining OptOut or Termination _____

Signature _____
Patient or Legal Representative

Date of Signature _____

**Request to Opt Out of Michigan Health Information Network (MiHIN)
or Request to Terminate Opt Out Form**

DRAFT

*Completed forms must be sent to the appropriate MiHIN Office
(visit http://www.mihin.org/hie_info.html) for processing. (To be determined)*